UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE

IN RE

Chapter 11

Case Nos. 00-3837 to 3854 (JKF)

(Jointly Administered)

Debtors.

Hearing Date: February 28, 2005 at 10:00 a.m.

Obj. Deadline: February 11, 2005 at 5:00 p.m.

MOTION OF CREDIT SUISSE FIRST BOSTON, AS AGENT, FOR DETERMINATION OF CORE OR NON-CORE STATUS PURSUANT TO LOCAL RULE 5011-1

TO: THE HONORABLE JUDITH K. FITZGERALD, UNITED STATES BANKRUPTCY JUDGE

Credit Suisse First Boston ("CSFB"), as Agent for the prepetition bank lenders to Owens Corning and certain of its subsidiaries as debtors and debtors in possession (collectively, the "Debtors"), has moved for an order pursuant to 28 U.S.C. § 157(d) withdrawing the reference to the Bankruptcy Court (the "Motion To Withdraw The Reference") with respect to the Motion Of Credit Suisse First Boston, As Agent, For Order Authorizing It To Commence An Adversary Proceeding On Behalf Of The Debtors' Estates Against Certain Physicians Who Falsely Reported X-Ray Readings As Positive For Asbestos Related Impairment. In accordance with the requirements of Rule 5011-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, CSFB moves for a determination by this Court that the proceeding to be withdrawn involves both "core" and "non-core" issues within the meaning of 28 U.S.C. § 157. In support of the Motion To Withdraw The Reference, CSFB respectfully represents as follows:

- 1. A Bankruptcy proceeding may involve both core and non-core issues. *Halper v. Halper*, 164 F.3d 830, 838 (3d Cir. 1999) (case presented a mixture of core and non-core claims).
- 2. A "proceeding is core under section 157 if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case." *In re Marcus Hook Development Park, Inc.*, 943 F.2d 261, 267 (3d Cir. 1991) (quotations omitted).
- 3. "If the proceeding does not invoke a substantive right created by federal bankruptcy law and is one that could exist outside of bankruptcy it is not a core proceeding." *Torkelsen v. Maggio (In re Guild and Gallery Plus, Inc.)*, 72 F.3d 1171, 1178 (3d Cir. 1996) (quotations omitted).
- 4. CSFB believes that the proceeding at issue involves both core and non-core issues. In order to grant CSFB permission to initiate a suit on behalf of the Debtors' estates, the Court must determine that the Debtors have unjustifiably refused to pursue their own cause of action and that CSFB has alleged colorable claims. *Investors Ltd. v. Donald Kingsboroughia (In re Yes! Entertainment Corp.)*, 316 B.R. 141, 145 (D. Del. 2004). Whether the Debtors have unjustifiably refused to initiate suit upon demand is a core issue because it could only arise in the context of a bankruptcy case. However, the determination of whether CSFB has alleged colorable claims is based on substantive state law, and is thus non-core.

CONCLUSION

CSFB respectfully requests that this Court determine that the proceeding for which withdrawal of reference is sought involves both core and non-core issues, in the proposed form of order attached hereto as Exhibit A.

Dated: January 12, 2005

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